



CRP(MD)No.1363 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.1363 of 2021
and
C.M.P(MD)No.7775 of 2021

K.Gurusamy

... Revision Petitioner/1st Respondent/1st Defendant

Vs

1.Arumugam

... 1st Respondent/Petitioner/Plaintiff

**2.The Tahsildar,
Tahsildar Office,
Thiruvaiyaru,
Thanjavur District.**

**3.The Revenue Divisional Officer,
Revenue Divisional Office,
Thanjavur District.**

**4.The District Collector,
District Collector Office,
Thanjavur District.**

**... Respondents 2 to 4/Respondents 2 to 4/
Defendants 2 to 4**

Prayer:

This Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 29.07.2021 passed in I.A.No.28 of 2021 in O.S.No.22 of 2021 on the file of the District Munsif Court, Thiruvaiyaru.



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For Petitioner : Ms.Saranya
for Mr.M.R.Sreenivasan
and assisted by

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader for R2 to R4

ORDER

The Civil Revision Petition is filed to set aside the fair and decreetal order dated 29.07.2021 passed in I.A.No.28 of 2021 in O.S.No.22 of 2021 on the file of the District Munsif Court, Thiruvaiyaru.

2.The first respondent/plaintiff has filed the suit in O.S.No.22 of 2021 for declaration and mandatory injunction with regard to the common usage of water channel. Pending the said suit, the first respondent filed the above said I.A.No.28 of 2021 for appointment of Advocate Commissioner and the same was allowed by the trial Court. Against which, the revision petitioner has preferred the present revision.

3.Ms.Saranya, learned counsel representing Mr.M.R.Sreenivasan, learned counsel for the petitioner, submits that in the suit itself, the first respondent/plaintiff stated that the water channel is in existence for 200 years,



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whereas no description was given in the plan annexed to the suit, which finds place at Page No.10 of the typed set of papers. In the absence of any description with regard to the FMB sketch, survey number and other details of the existence of water channel, which is a natural resource in the suit property, it is the duty of the first respondent/plaintiff to furnish all those details at the time of filing the plaint. She further submits that the appointment of Advocate Commissioner is nothing but a collection of evidence, which cannot be permitted. She further submits that the plaint is bereft of details and the report filed by the Advocate Commissioner without any details. If such an application is allowed and the Advocate Commissioner visits the premises, it will amount to the collection of evidence and the scope of appointment of Advocate Commissioner is totally giving a different colour as to collection of evidence.

4.Despite notice to the contesting first respondent/plaintiff, there is no appearance either in person or through counsel.

5.From the petition for appointment of Advocate Commissioner, the first respondent/plaintiff has contended that the suit scheduled property is situated in A, B, C, D in the plan attached along with the plaint, whereas the property shown in the 'D' portion, it is alleged by the plaintiff that there is a water channel



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running. As rightly contended by the learned counsel for the petitioner, there is no such water channel as claimed by the first respondent/plaintiff in the suit. The trial court, while allowing the said application, had held that the first respondent/plaintiff had pleaded that there exists a water channel and the revision petitioner had denied the existence of the water channel. Further, the trial Court had arrived at a conclusion that whether the water channel is in existence or not, it is appropriate only when the Advocate Commissioner is appointed and visits the suit premises and files a report, only then it will come to unearth the truth.

6. Admittedly, the plan affixed along with the suit, which finds place at Page No.10 of the typed set, did not make a mention with regard to the survey number of the water channel. The existence of the water channel could be relevantly available, as it is a natural water resource; it could be available from the FMB sketch 'A' register and other revenue documents would clearly prove the existence of water body. Purposefully, the first respondent/plaintiff has not made any mention with regard to the plan and description of the above details. However, such a disputed fact could be relied upon only when the Advocate Commissioner visits the premises and files his report along with the plan with the help of the revenue authorities. The said application filed by the first respondent/plaintiff cannot be challenged at the nascent stage itself. If the



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petitioner is aggrieved by the finding of the Advocate Commissioner's report, he is always at liberty to file objections to the report filed by the Advocate Commissioner. Even after filing the objections, it is only material for the Court to analyze the claim of the first respondent/plaintiff, the objection of the petitioner and the alleged finding to be given by the Advocate Commissioner and even after all these things, it is for the trial Court to cross examine the entire facts.

7.In view of the same, the order passed by the trial Court needs no interference. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.Since the suit is of the year 2021, the District Munsif Court, Thiruvaiyaru, is directed to conclude the suit in O.S.No.22 of 2021 and dispose of the case within a period of one year from the date of receipt of a copy of this order.

18.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sjj
To

The District Munsif Court, Thiruvaiyaru.



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N.SENTHILKUMAR, J.

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